

# State of Wisconsin



1997 Assembly Bill 191

Date of enactment: **June 10, 1998**  
Date of publication\*: **June 24, 1998**

## 1997 WISCONSIN ACT 273

AN ACT *to renumber and amend* 767.32 (1r); *to create* 767.32 (1r) (b), 767.32 (1r) (c), 767.32 (1r) (d), 767.32 (1r) (e) and 767.32 (1r) (f) of the statutes; and *to affect* [1997 Wisconsin Act 27](#), section [5031](#) and [1997 Wisconsin Act 27](#), section [9426 \(8\)](#); **relating to:** granting credit against child or family support.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 767.32 (1r) of the statutes is renumbered 767.32 (1r) (intro.) and amended to read:

767.32 (1r) (intro.) In an action under sub. (1) to revise a judgment or order with respect to child support or family support, the court may ~~not~~ grant credit to the payer against support due prior to the date on which the ~~action is commenced~~ petition, motion or order to show cause is served for payments made by the payer ~~on behalf of the child other than payments made to the clerk of court or support collection designee under as provided in s. 767.265 or 767.29 or as otherwise ordered by the court,~~ in any of the following circumstances:

**SECTION 3.** 767.32 (1r) (b) of the statutes is created to read:

767.32 (1r) (b) The payer shows by documentary evidence that the payments were made directly to the payee by check or money order, and shows by a preponderance of the evidence that the payments were intended for support and not intended as a gift to or on behalf of the child, or as some other voluntary expenditure, or for the payment of some other obligation to the payee.

**SECTION 4.** 767.32 (1r) (c) of the statutes is created to read:

767.32 (1r) (c) The payer proves by clear and convincing evidence, with evidence of a written agreement, that the payee expressly agreed to accept the payments in lieu of child or family support paid as provided in s. 767.265 or 767.29, not including gifts or contributions for entertainment.

**SECTION 5.** 767.32 (1r) (d) of the statutes is created to read:

767.32 (1r) (d) The payer proves by documentary evidence that, for a period during which unpaid support accrued, the child received benefits under [42 USC 402 \(d\)](#) based on the payer's entitlement to federal disability insurance benefits under [42 USC 401 to 433](#). Any credit granted under this paragraph shall be limited to the amount of unpaid support that accrued during the period for which the benefits under [42 USC 402 \(d\)](#) were paid.

**SECTION 6.** 767.32 (1r) (e) of the statutes is created to read:

767.32 (1r) (e) The payer proves by a preponderance of the evidence that the child lived with the payer, with the agreement of the payee, for more than 60 days beyond a court-ordered period of physical placement. Credit may not be granted under this paragraph if, with respect to the time that the child lived with the payer beyond the court-ordered period of physical placement, the payee sought to enforce the physical placement order through civil or criminal process or if the payee shows that the

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

child's relocation to the payer's home was not mutually agreed to by both parents.

**SECTION 7.** 767.32 (1r) (f) of the statutes is created to read:

767.32 (1r) (f) The payer proves by a preponderance of the evidence that the payer and payee resumed living together with the child and that, during the period for which a credit is sought, the payer directly supported the family by paying amounts at least equal to the amount of unpaid court-ordered support that accrued during that period.

**SECTION 8.** 1997 Wisconsin Act 27, section 5031 is repealed.

**SECTION 9.** 1997 Wisconsin Act 27, section 9426 (8) is amended to read:

[1997 Wisconsin Act 27] Section 9426 (8) CENTRALIZED RECEIPT AND DISBURSEMENT OF SUPPORT AND MAINTENANCE. The treatment of sections 20.445 (3) (a), (ja), (k), (q) and (r), 20.855 (7) (j), 25.17 (1) (tm), 25.68, 49.24 (1) (by SECTION 1882n), 49.855 (1), (2), (3) (by SECTION 1992m), (4), (4m) (b) (by SECTION 1995m) and (c) and (5), 565.30 (5), 767.001 (7), 767.025 (3) and (4), 767.25 (4m) (c) 1. and (6) (intro.) and (a), 767.261 (intro.) and

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(1), 767.262 (4) (b), 767.263, 767.265 (1), (2r), (3h), (6) (a) and (b) and (7), 767.267 (1), (2) and (5), 767.29 (1m) (intro.) and (d) and (2), ~~767.32 (1r)~~, 767.51 (3m) (c) 1. and (5p) (intro.) and (a), 769.319 and 814.61 (12) (cm) of the statutes, the repeal of sections 20.445 (3) (g), 59.40 (2) (h), 59.53 (5m), 814.61 (12) (b) and 814.612 of the statutes, the renumbering and amendment of sections 59.53 (5) and 767.29 (1) of the statutes, the amendment of section 49.175 (1) (intro.) of the statutes, the creation of sections 59.53 (5) (b) and 767.29 (1) (b), (d) and (f) of the statutes and SECTION 9226 (1) of this act take effect on the date stated in the notice published by the department of workforce development in the Wisconsin Administrative Register under section 767.29 (1) (f) of the statutes, as created by this act, or on October 1, 1999, whichever is earlier.

### **SECTION 10. Initial applicability.**

(1) This act first applies to arrearages existing and child or family support payments past due on the effective date of this subsection, regardless of when the judgment or order under which the arrearages accrued or the child or family support is owed was entered.